

**CONTROL AGREEMENT  
FOR DEPOSIT ACCOUNT  
Deposit Account Control  
Agreement (DACA)  
Section 232**

**U.S. Department of Housing  
and Urban Development  
Office of Healthcare Programs**

OMB Approval No. 9999-9999  
(exp. mm/dd/yyyy)

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This Control Agreement for Deposit Account (“Agreement”) is made and entered into as of \_\_\_\_\_, 200\_ by and among \_\_\_\_\_ **LLC**, a \_\_\_\_\_ limited liability company (“Debtor”); \_\_\_\_\_, a \_\_\_\_\_ corporation (“FHA Lender” or “Secured Party”), and \_\_\_\_\_, a national banking association (“Bank”).

A. Pursuant to that certain Lessee Security Agreement dated \_\_\_\_\_, 200\_, by and between Debtor and Secured Party (the “Security Agreement”), Debtor has agreed to provide certain collateral, including, without limitation, the Deposit Account (as defined herein), to Secured Party to secure the Obligations (as defined in the Security Agreement). The Security Agreement has been executed in connection with a certain mortgage loan (the “Mortgage Loan”) being made by FHA Lender to \_\_\_\_\_ LLC, a \_\_\_\_\_ limited liability company (“Landlord”), which Mortgage Loan is being insured by the U.S. Department of Housing and Urban Development (“HUD”).

B. Debtor has established the following deposit account with Bank (the “Deposit Account”):

Name in Which Account is Maintained	Branch in which Account is Maintained / Routing Number	Account Number
_____ _____ _____ LLC	_____ _____ Branch.  Routing No: _____	_____

C. The parties hereto desire to enter into this Agreement in order to set forth their rights and duties with respect to the Deposit Account and all funds on deposit therein from time to time and to perfect Secured Party's security interest in the Deposit Account.

Now, therefore, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, the parties agree as follows:

1. Security Interest. Debtor and Secured Party hereby notify Bank that Debtor has granted Secured Party a security interest in the Deposit Account and all cash, moneys and other property on deposit from time to time therein (collectively, "Receipts"), and all proceeds of the foregoing. Bank acknowledges being so notified. Secured Party and Debtor acknowledge and agree that Bank has not been and will not be provided with a copy of the Security Agreement or other related documents executed by Debtor, and that Bank shall not be responsible for the terms set forth in the Security Agreement or such other related documents.

2. Control of Deposit Account. (a) Debtor and Bank acknowledge and agree that Secured Party has control (as defined in Section 9-104 of the Uniform Commercial Code) of the Deposit Account.<sup>1</sup> Bank will not permit the withdrawal or other disposition of any funds in the Deposit Account except as expressly provided in this Agreement.

(b) Until such time as Secured Party delivers a Notice of Exclusive Control (as defined herein) to Bank, Bank shall comply with instructions directing the withdrawal, payment, transfer or other disposition of funds in the Deposit Account ("Disposition Instructions") originated by Debtor which Debtor is entitled to give concerning the Deposit Account. Nothing in the foregoing shall, or shall be construed to, limit, impair, or otherwise adversely affect any of Secured Party's rights or remedies under the Security Agreement. A "Notice of Exclusive Control" is a written notice from Secured Party to Bank that Secured Party is thereby exercising exclusive control over the Deposit Account and the funds therein. See Exhibit A. Secured Party may, at any time at which there exists an "Event of Default" (as defined in the Security Agreement) under the Security Agreement, deliver to Bank a Notice of Exclusive Control.

(c) After Bank receives a Notice of Exclusive Control in accordance with this Section 2 and until the Secured Party has rescinded or withdrawn such Notice of Exclusive Control: (i) Bank will comply solely with instructions originated by Secured Party with respect to the Deposit Account and any and all funds therein, including, without limitation, any withdrawals from the Deposit Account or any other disposition thereof, without further consent by Debtor and (ii) Bank will cease, without further consent of Debtor, complying with

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<sup>1</sup> Pursuant to and in accordance with Section 9-104 of the Uniform Commercial Code, "control" by a secured party of a deposit account is effectuated, among other things, where the debtor, the secured party, and the bank with which the deposit account is maintained have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor, even if the debtor retains the right to direct the disposition of funds from the deposit account.

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instructions concerning the Deposit Account or funds on deposit therein originated by Debtor or the representatives of Debtor. Without in any way limiting the foregoing, in the event of any dispute between FHA Lender and Debtor (including, but not limited to, as to whether an Event of Default exists), Bank shall, in all circumstances after a Notice of Exclusive Control has been given, follow the directions of the FHA Lender and shall not follow the directions of the Debtor.

(d) If FHA Lender believes an Event of Default exists, FHA Lender is entitled to give a Notice of Exclusive Control, and Bank is obligated to follow the directions of FHA Lender in respect of the Deposit Account, without any right or duty to inquire as to whether an Event of Default in fact exists under the Security Agreement. If it is later concluded that no Event of Default existed at the time the Notice of Exclusive Control was given, Debtor will have all of its rights and remedies against FHA Lender for any damages caused by the giving of such Notice of Exclusive Control, subject to the limitations set forth in the Security Agreement.

(e) The Deposit Account will use Debtor's taxpayer identification number.

3. Fees. Debtor shall be responsible only for those usual and customary service charges, transfer fees, and account maintenance fees (collectively, "Fees") of Bank in connection with the Deposit Account that would otherwise exist in the absence of this Agreement. Secured Party shall not have any responsibility or liability for the payment of any Fees.

4. Representations and Warranties. The Bank represents and warrants to the Secured Party that the Bank (i) is an organization engaged in the business of banking, (ii) maintains the Deposit Account as a demand deposit account or accounts in the ordinary course of the Bank's business and (iii) has not entered into any currently effective agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party. The Bank will not enter into any agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party.

5. Setoff. Except for Fees of Bank payable pursuant to Section 3 hereof, Bank hereby agrees that Bank will not exercise or claim any right of setoff or security interest or banker's lien against the Deposit Account or any Receipts on deposit therein, and Bank hereby further waives any such right or lien that it may have against any Receipts deposited in the Deposit Account.

6. Limits of Bank's Liability.

(a) Bank will not be liable to Debtor or Secured Party for any expense, claim, loss, damage or cost ("Damages") arising out of or relating to its performance under this Agreement other than those Damages which result directly from its acts or omissions constituting negligence or intentional misconduct.

(b) Notwithstanding any of the other provisions in this Agreement, in the event of the commencement of a case pursuant to Title 11, United States Code, filed by or against Debtor, or in the event of the commencement of any similar case under then applicable

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federal or state law providing for the relief of debtors or the protection of creditors by or against Debtor, Bank may act as Bank deems necessary to comply with all applicable provisions of governing statutes (and shall use commercially reasonable efforts to inform FHA Lender of such acts if required by law) and shall not be in violation of this Agreement as a result.

(c) Bank shall be permitted to comply with any writ, levy order or other similar judicial or regulatory order or process concerning the Deposit Account and shall not be in violation of this Agreement for so doing.

7. Indemnity and Release.

(a) Debtor hereby agrees to indemnify, defend and hold harmless Bank against any loss, liability or expense incurred in connection with this Agreement, the Deposit Account (except to the extent due to Bank's willful misconduct or negligence) or incurred at Debtor's or FHA Lender's direction or instruction, including without limitation any returned items or charges, and Debtor hereby releases Bank and holds Bank harmless in respect of the foregoing.

(b) Debtor, further agrees to pay to Bank, upon receipt of Bank's invoice, all reasonable costs, expenses and attorneys' fees (including allocated costs for in-house legal services) incurred by Bank in connection with the enforcement of this Agreement and any instrument or agreement required hereunder, including but not limited to any such costs, expenses and fees arising out of the resolution of any conflict, dispute, motion regarding entitlement to rights or rights of action, or other action to enforce FHA Lender's rights in a case arising under Title II, United States Code.

8. Termination. This Agreement may be terminated by Debtor only upon delivery to Bank of a written notification jointly executed by Debtor and Secured Party. This Agreement may be terminated by Secured Party at any time, upon its delivery of written notice to Debtor and Bank. This Agreement may be terminated by Bank at any time on not less than 30 days' prior written notice delivered to Debtor and Secured Party. Upon delivery or receipt of such notice of termination by Bank, Bank will immediately transmit to such deposit account as Secured Party may direct all funds, if any, then on deposit in the Deposit Account.

9. Notices. Any notice or document required or permitted to be delivered hereunder shall be in writing and shall be effective upon delivery, if personally delivered, sent by overnight courier, or three business days after mailing, if mailed. All notices shall be personally delivered, delivered by overnight courier or sent by United States Mail, postage prepaid, Certified or Registered Mail, addressed to the parties hereto at the respective addresses set forth on the signature pages, or at such other address as they have theretofore specified by written notice delivered in accordance herewith. Any party hereto, at any time, by written notice given to the other in accordance with this Section, may designate a different address to which such communications shall thereafter be directed.

10. Deposit Account Information. If the Secured Party so requests, to the extent that the Bank has the operational ability to do so, the Bank will provide to the Secured Party, whether by Internet access or otherwise, a copy of each periodic account statement relating to the Deposit

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Account ordinarily furnished by the Bank to the Debtor. The Bank's liability for failing to provide the account statement will not exceed the Bank's cost of providing the statement. The Debtor authorizes the Bank to provide to the Secured Party, whether by internet access or otherwise, any other information concerning the Deposit Account that the Bank may agree to provide to the Secured Party at the Secured Party's request.

11. Miscellaneous.

11.1 This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns, but neither Debtor nor Bank shall be entitled to assign or delegate any of its rights and/or duties under this Agreement without mutual agreement of the parties.

11.2 Secured Party may assign its rights and/or duties under this Agreement by written notice to Bank and Debtor and such assignment shall be effective as to Debtor and Bank upon written notice to same.

11.3 This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature delivered by facsimile transmission or other electronic means shall be deemed the equivalent of an original signature for all purposes.

11.4 This Agreement shall be governed by the laws of the State of \_\_\_\_\_.

11.5 This Agreement may be amended only by a written instrument executed by Secured Party, Bank and Debtor acting by their respective duly authorized representatives.

11.6 Debtor acknowledges that the agreements made by it and the authorizations granted by it in this Agreement are irrevocable and that the authorizations granted in this Agreement are powers coupled with an interest.

*[SIGNATURES ON FOLLOWING PAGES]*

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DEBTOR SIGNATURE PAGE  
FOR  
CONTROL AGREEMENT FOR DEPOSIT ACCOUNT

In witness whereof, the undersigned has executed and delivered this Agreement as of the date first above set forth.

DEBTOR:

	<div style="border-bottom: 1px solid black; display: inline-block; width: 80%;"></div> <b>LLC</b> , a ____ limited liability company
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Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

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SECURED PARTY SIGNATURE PAGE  
FOR  
CONTROL AGREEMENT FOR DEPOSIT ACCOUNT

In witness whereof, the undersigned have executed and delivered this Agreement as of the date first above set forth.

SECURED PARTY:

	_____
	a _____ corporation
By	_____
Name	_____
Title	_____

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_-\_\_\_\_\_

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BANK SIGNATURE PAGE  
FOR  
CONTROL AGREEMENT FOR DEPOSIT ACCOUNT

In witness whereof, the undersigned Bank has executed and delivered this Agreement as of the date first above set forth.

BANK:

	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> a national banking association
By	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>
Name	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>
Title	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div>

Address for Notices:

Attn: Telephone: ( ) - Facsimile: ( ) -

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**Exhibit A**

**NOTICE OF EXCLUSIVE CONTROL**

[Letterhead of Controlling Secured Party]

[Date]

Depository Bank  
Title/Office  
Address

**Re: Deposit Account Number(s):** \_\_\_\_\_  
**Notice of Exclusive Control**

Ladies and Gentlemen:

Reference is made to the Deposit Account Control Agreement dated as of \_\_\_\_\_, 20xx (the “**Agreement**”) by and among \_\_\_\_\_ (the “**Company**”), \_\_\_\_\_ (as “**Secured Party**”) and \_\_\_\_\_ (“**Bank**”) regarding the above-described deposit accounts (the “**Deposit Accounts**”). A copy of the Agreement is attached hereto.

In accordance with Section C.2 of this Agreement, we hereby give you notice of our exercise of exclusive control over the Deposit Account(s), and we hereby instruct you to transfer collected and available funds to our account as follows:

Bank Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
ABA Routing: \_\_\_\_\_  
Account No.: \_\_\_\_\_  
Reference: \_\_\_\_\_

Very truly yours,

Name of FHA Lender  
as Secured Party

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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